

reasonable place to end up on this whole debate. This would retain the statute of repose, but make certain exceptions to that statute of repose. If you look at the map on your desk, it will move us from being one of the completely white states to one of the darkest states, which are the intermediate states, the states that have a statute of repose, yet carve out certain exemptions. The...one of the major exemptions that has been discussed during the discussions that have been ongoing regarding LB 137 regards the breast implants that I alluded to in my opening on the bill. One of the two...the two major things that this amendment would do is carve out an exemption for implants, prosthetics, appliances, or other devices surgically placed on or within the human body. This is something that I think is foremost in people's concerns right now, because obviously a breast implant is something that is designed to have a useful life of more than ten years, in fact it's designed to have a useful life as long as that person's body lasts. So, clearly that is a place that we would like to deviate from the statute of repose. The other portion of the amendment that Senator Avery and I have been working on would retain the statute of repose. We would retain the statute of repose, say the presumption is that the useful life of a product is ten years in the State of Nebraska. But at the same time we would introduce the concept that I just mentioned, and that is the useful safe life of the product. We would say that that actually is the ultimate measure of when a product can be deemed to cause injury, and that...but that the presumption, under the amendment that is in front of you right now, of mine and Senator Avery's, is that ten years is the useful safe life of a product. The plaintiff, that is the person who's alleging to have been injured by the product, under...under this amendment, would be able to introduce evidence that this presumption is incorrect, and may...and can rebut the presumption by a preponderance of the evidence, that is by coming in and saying, hey, I've got evidence that the product that I was using that caused my injury actually has a useful safe life of over ten years. And the amendment would go on to outline a number of things that the court would take into consideration in determining whether the plaintiff successfully rebuts that presumption, including the amount of wear and tear that the product has been subjected to, the effect of deterioration from natural causes, the normal practices of the user, similar users of the product that manufacture, and representations made by the product manufacturer, such as warranties that go beyond a ten year period, things like that, any alterations made by third parties.